



#10

PATENT

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of:

Midgley et al.

Application. No. 09/465,436

Filed: December 16, 1999

For: Systems and Methods for Backing Up  
Data Files

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Group Art Unit: 2771

Examiner: NYA

Docket No.: NTK-005.01

**CERTIFICATE OF FIRST CLASS MAILING**

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail, postage prepaid, in an envelope addressed to: Petitions Branch, Commissioner for Patents Washington, D.C. 20231.

8/25/01  
Date of Signature  
and of Mail Deposit

William Botting  
William Botting

**PETITION FOR REVIVAL OF ABANDONED APPLICATION  
UNDER 37 C.F.R. §1.137(b)**

Petitions Branch  
Commissioner for Patents  
Washington, D.C. 20231

**RECEIVED**

SEP 04 2001

OFFICE OF PETITIONS

Sir:

Applicants respectfully petition to revive the above-identified patent application. Although a Notice of Abandonment has **NOT** been received, pursuant to 37 C.F.R. §1.137(b), Applicants declare:

1. The subject Application was filed on December 16, 1999;
2. A Notice to File Missing Parts of Application was mailed to Applicants' Attorney on February 1, 2000, and is attached hereto;

08/31/2001 SLUANG1 00000029 09465436

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620.00 0P

20/470188.1

3. A Response to the Notice to File Missing Parts of Application, including a Certificate of First Class Mailing, was filed on September 1, 2000, further including a Request for Five-Month Extension of Time with certificate of First Class mailing, a Combined Declaration/Power of Attorney with the signatures of four (4) of five (5) named inventors, and a check in the amount of \$2740 that includes \$1850 for five months extension, \$760.00 for a filing fee, and \$130 for a surcharge. A copy of the Response and other documents as provided herein, is attached. As the attachments indicate, Edward J. Kelly filed the Response on September 1, 2000;

4. In February 2001, Edward J. Kelly resigned from the present law firm;

5. On or about June 1, 2001, an internal file review indicated that a fully executed Declaration for the subject application was misfiled in another file. Applicants' present Attorney, the undersigned, filed a Substitute Declaration on June 21, 2001, providing the signatures of all inventors;

6. On or about June 19, 2001, Applicants' present Attorney, the undersigned, received a telephone call from Ms. Linda Hallman of the U.S. PTO indicating that a Response to the Notice to File Missing Parts of Application was not received and/or included in the file for Application 09/465,435. Application 09/465,435 is a concurrently filed and commonly owned application to the subject application.. Ms. Hallman indicated that Application 09/465,435 was to be abandoned. Upon the request of Ms. Hallman, Applicants' Attorney forwarded to Ms. Hallman via FAX, a copy of the postcard and Declaration filed on September 5, 2000, for Application 09/465,435. Although Applicants' Attorney believed that such transmission was effective, a phone-call on June 21, 2001 by Applicants' Attorney to Ms. Hallman indicated that the FAX was not received. Accordingly, a FAX re-transmission was provided on June 21, 2001;

7. On June 21, 2001, Applicants' Attorney confirmed Ms. Hallman's receipt of the second FAX transmission regarding Application 09/465,435;

8. Upon receiving Ms. Hallman's telephone call, Applicants' Attorney investigated the status of the subject Application through the U.S. PTO PAIR system that indicated that the September 1, 2000 Response was entered, and the subject Application was being processed for Examination;

9. On July 9, 2001, Applicants' Attorney received a Notice of Incomplete Reply dated July 5, 2001, indicating that the Response of September 5, 2000, for Application 09/465,435, did not include the signatures of two (2) of six (6) inventors;

10. On or about August 22 and 23, Applicants' Attorney discussed with Mr. Robert Clark and Mr. Mark Polutta of the U.S. PTO, the Reply of September 1, 2000, for the subject Application, and the Reply of September 5, 2000 for Application 09/465,435. Applicants' Attorney was informed through such discussion, that although the subject application is currently being processed for examination, the Reply of September 1, 2000 was incomplete and should have resulted in a Notice of Abandonment.

11. In accordance with 37 CFR 1.137(b), Applicants' Attorney provides:

a. In accordance with 37 CFR 1.137(b)(1), a fully executed Response to File Missing Parts of an Application is supplied herein with a fully executed Combined Declaration and Power of Attorney, a copy of the Notice to File Missing Parts of Application, and a Verified Statement of Small Entity Status. Filing fees and fees for an Extension of Time were previously submitted in the Response dated September 1, 2000;

b. In accordance with 37 CFR 1.137(b)(2) and 1.17(m), a petition fee in the amount of \$620.00 based on a small entity status;

c. In accordance with 37 CFR 1.137(b)(3), Applicants' Attorney states that the entire delay in filing the enclosed Reply was unintentional based upon the facts declared in paragraphs 1-10 herein. A Notice of Abandonment has **NOT** been received.

It is thus respectfully petitioned and requested that the subject Application be revived, that the enclosed Response to Missing Parts of Application be entered, and that the subject Application be processed for Examination.

Although we believe that we have appropriately provided for any fees due in connection with this submission, the Commissioner is authorized to credit any overpayment or charge any deficiencies to/from our **Deposit Account No. 06-1448**.

If any questions remain, or any additional information is needed, Applicants' Attorney respectfully requests a telephone call to the undersigned.

Dated:

*Aug 28, 2001*

Patent Group  
Foley, Hoag & Eliot LLP  
One Post Office Square  
Boston, MA 02109-2170  
(617) 832-1000

Enclosures

Respectfully submitted,

*Kevin A. Oliver*

Kevin A. Oliver  
Registration No. 42,049

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UNITED STATES DEPARTMENT OF COMMERCE  
Patent and Trademark Office  
Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231

APPLICATION NUMBER	FILING/RECEIPT DATE	FIRST NAMED APPLICANT	ATTORNEY DOCKET NO./TITLE
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09/16/99 436

12/16/99

MIDGLEY

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NTK-005.01

PATENT GROUP  
FOLEY HOAG & ELIOT LLP  
ONE POST OFFICE SQUARE  
BOSTON MA 02109-2170

0242/0201

Res p to MP

NOT ASSIGNED

**DUE:** 4-1-00

2771

**FINAL:** 9-1-00

DATE MAILED:

02/01/00

**NOTICE TO FILE MISSING PARTS OF APPLICATION**  
**Filing Date Granted**

An Application Number and Filing Date have been assigned to this application. The items indicated below, however, are missing. Applicant is given TWO MONTHS FROM THE DATE OF THIS NOTICE within which to file all required items and pay any fees required below to avoid abandonment. Extensions of time may be obtained by filing a petition accompanied by the extension fee under the provisions of 37 CFR 1.136(a). If any of items 1 or 3 through 5 are indicated as missing, the SURCHARGE set forth in 37 CFR 1.16(e) of ☐ \$65.00 for a small entity in compliance with 37 CFR 1.27, or ☒ \$130.00 for a non-small entity, must also be timely submitted in reply to this NOTICE to avoid abandonment.

If all required items on this form are filed within the period set above, the total amount owed by applicant as a

☐ small entity (statement filed) ☐ non-small entity is \$ 870.00

☒ 1. The statutory basic filing fee is:

- ☐ missing.  
☐ insufficient.

Applicant must submit \$ 760.00 to complete the basic filing fee and/or file a small entity statement claiming such status (37 CFR 1.27).

☐ 2. The following additional claims fees are due:

\$ \_\_\_\_\_ for \_\_\_\_\_ total claims over 20.

\$ \_\_\_\_\_ for \_\_\_\_\_ independent claims over 3.

\$ \_\_\_\_\_ for multiple dependent claim surcharge.

Applicant must either submit the additional claim fees or cancel additional claims for which fees are due.

☒ 3. The oath or declaration:

- ☒ is missing or unsigned.  
☐ does not cover the newly submitted items.

An oath or declaration in compliance with 37 CFR 1.63, including residence information and identifying the application by the above Application Number and Filing Date, is required.

☐ 4. The signature(s) to the oath or declaration is/are by a person other than inventor or person qualified under 37 CFR 1.42, 1.43 or 1.47.

A properly signed oath or declaration in compliance with 37 CFR 1.63, identifying the application by the above Application Number and Filing Date, is required.

☐ 5. The signature of the following joint inventor(s) is missing from the oath or declaration:

An oath or declaration in compliance with 37 CFR 1.63 listing the names of all inventors and signed by the omitted inventor(s), identifying this application by the above Application Number and Filing Date, is required.

☐ 6. A \$50.00 processing fee is required since your check was returned without payment (37 CFR 1.21(m)).

☐ 7. Your filing receipt was mailed in error because your check was returned without payment.

☐ 8. The application was filed in a language other than English.

Applicant must file a verified English translation of the application, the \$130.00 set forth in 37 CFR 1.17(k), unless previously submitted, and a statement that the translation is accurate (37 CFR 1.52(d)).

☐ 9. OTHER:

Direct the reply and any questions about this notice to "Attention: Box Missing Parts."

**A copy of this notice MUST be returned with the reply.**

Customer Service Center  
Initial Patent Examination Division (703) 308-1202

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FEB 04 2000

F. & E. LLP  
PATENT DEPT.



PATENT GROUP  
FOLEY, HOAG & ELIOT LLP  
ONE POST OFFICE SQUARE  
STON, MASSACHUSETTS 02109-2170

International PCT Appln. No.: NTK-501 09/465,436

Filed: 16 Dec 1999 Atty Docket No.: NTK-005101

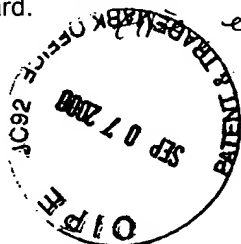
Applicant(s): M. d. g. l. e. y et al.

Title: Systems and methods for Backing up Data files

The following was/were received in the U.S. Patent & Trademark Office Mail Room on the date stamped hereon:

Response to Notice of missing parts, w/ 5 min ext of  
; this return postcard. executed declaration

Atty: EJK



Mailing Date: 1 Sep 2001

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date stamped hereon:

Response to Notice of missing parts, w/ 5 min ext of  
; this return postcard. time, executed declaration

Atty: EJK

Mailing Date: 1 Sep 2001

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☐ FOLEY, HOAG & ELIOT LLP

INVOICE #	INVOICE DATE	CLIENT/CASE	AMOUNT
09/01/00	09/01/00	21653 00501	2,740.00
DATE:	09/01/00	CHECK#:	TOTAL:
	09/01/00	178002	2,740.00

AN ARTIFICIAL WATERMARK IS PRESENT ON THE REVERSE SIDE

FOLEY, HOAG & ELIOT LLP

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☐ FOLEY, HOAG & ELIOT LLP

INVOICE #	INVOICE DATE	CLIENT/CASE	AMOUNT
09/01/00	09/01/00	21653 00501	2,740.00
DATE:	09/01/00	CHECK#:	TOTAL:
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